In the High Court of Judicature for Rajasthan Jaipur Bench

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Cr. Misc. Petition No.399/1998
Smt. Sudha Raina ***Versus*** State

Date of Order ::: 07/09/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. SR Bajwa, Sr.Adv.,)
Mr. VR Bajwa) for petitioner
Mr. Arun Sharma, Public Prosecutor for State.

Instant petition U/s 482, CrPC is directed against order dt.24/02/98 whereby Special Judge (EC), Jaipur took cognizance of offence U/s 3 read with Ss.7 & 8 of Essential Commodities Act (“**the Act**”) while accepting application U/s 319, CrPC filed by Public Prosecutor and ordered production of petitioner by non-bailable warrants.

In brief, facts givingrise to instant petition are that Suresh Chandra Verma, Assistant District Supply Officer lodged written report at PS Bajaj Nagar (Jaipur) on 07/03/95 alleging inter-alia that on having received information, he alongwith enforcement team went to a place of vacant land situated in between Laxmi Mandir Cinema & Subji Mandi, near Tonk Road and found one Dayal Singh alongwith 11 colleagues (who, on

inquiry, said to be hawker of M/s Tej Enterprises) indulged in leaking out liquified petroleum gas (“**LPG**”) from cylinders meant for domestic use of different Govt. petroleum Cos., with the help of devices including 3 iron pipes and in course of search, all such devices used for leaking out LPG and 286 refill vouchers of M/s Tej Enterprises alongwith 227 filled LPG domestic cylinders & 37 empty cylinders were recovered, after weighing filled LPG cylinders through Weights & Measures Inspector out of which 58 LPG cylinders were found having less weights ranging from 400 gms to 4.9 Kgs., which were seized by Weights & Measures Inspector and only 169 LPG cylinders were found of standard weight. Aforesaid 37 empty LPG cylinders were seized by Indian Oil Co. Officer (OP Verma). Accordingly it was alleged that act of persons (named above) in leaking and lessening LPG out of filled cylinders was violative of Liquified Petroleum (Regulation of Supply & Distribution) Order, 1993 (“**the Order, 1993**”) and Rajasthan Petroleum products (Licensing & Control) Order, 1990 (“**the Order, 1990**”) as LPG cylinders were found being stocked by an un-authorised place and the consumers were either being or to be supplied LPG cylinders of

under-weight.

After investigation, police filed charge sheet on 12/02/96 only against persons named in the FIR. It is pertinent to mention here that instant petitioner who is Proprietor of M/s Tej Enterprises has neither been named in FIR nor charge sheet was filed against her after investigation.

After trial commenced, statements of (4) prosecution witnesses particularly Surinder Singh (Pw4) (Enforcement Inspector) was recorded, an application was filed U/s 319 CrPC by Public Prosecutor on 23/02/98 with the prayer that legal evidence having come on record prima facie constitutes commission of offence on the part of Proprietor of M/s Tej Enterprises (petitioner), U/s 3/7 of the EC Act. After taking note of material on record, learned trial Judge took cognizance against petitioner as well and ordered to produce petitioner through non-bailable warrant vide order dt.24/02/98. Hence this petition.

Counsel for petitioner submits that there was no legal evidence come on record in course of trial on which even prima facie opinion could be expressed of petitioner being involved

in the incident which was taken note of by Enforcement Inspector or the Weight & Measure Inspector; as such cognizance taken of offence U/s 3/7 of EC Act against petitioner is totally unwarranted and deserves to be quashed & set aside.

Counsel further submits that Asstt. Public Prosecutor in his application U/s 319, CrPC failed to disclose an iota of evidence on record against her and what has been alleged depicts only of connivance in the culpable act of 12 accused persons against whom charge sheet was filed after investigation by police and not against instant petitioner even at the very inception and presumption cannot be drawn against her and only evidence disclosed in application is statement of accused Dayal singh who during interrogation by police stated that he was not sole beneficiary of culpable act but a part of share was also being given to the owner of gas agency namely petitioner. Counsel, therefore, submits that statement of Dayal Singh who himself was an accused right from inception of inquiry & investigation by police, is not a legal evidence as being settled that statement of co-accused in no manner can be led to establish criminal

liability of some other person and apart from statement of Dayal Singh, referred to in application U/s 319, CrPC, there is no other evidence - referred to in application U/s 319 CrPC and that apart, from whose statement also, no adverse inference could be drawn; as such, on statement of Surinder Singh (Pw4) whose testimony having come on record at a later point of time in course of trial but atleast not corroborated by legal evidence, as such learned trial Judge has committed serious error of law & so also of jurisdiction in taking cognizance of offence against petitioner, which is not within scope of S.319 of the Code, and order impugned, therefore, deserves to be set aside.

Counsel further submits that details have been referred to by learned trial Judge in order impugned about that 264 filled domestic LPG cylinders alongwith refill vouchers seized in course of search in question belonged to gas agency of M/s Tej Enterprises and they were being unauthorisedly stored at an open place other than place disclosed in its license, besides other LPG domestic cylinders belonging to different Oil Cos., like Hindustan Petroleum & Bharat Petroleum were also found; but such facts were already a

part of material come on record in course of investigation and that being so, petitioner was not named in the FIR and having been found with no incriminating circumstances to connect her with culpable act of accused persons found in course of search, was not arrayed as an accused even at the time of filing charge sheet, nor at the stage of framing charge against other accused persons obviously because material produced alongwith challan papers did not disclose prima facie evidence to constitute culpable act attributing petitioner in regard to search in question; as such aforesaid material ought not to have been taken note of while deciding application U/s 319 CrPC vide order impugned.

As regards evidence came during trial particularly statement of Surinder Singh (Pw4) referred to in application U/s 319 CrPC, in regard to version given out by accused Dayal Singh to Surinder Singh (Pw4) in course of interrogation that he was not sole beneficiary of culpable act of leaking out and lessening LPG out of filled domestic cylinders but share of benefits was also being given to the Gas agency; Counsel submits that all such incriminating circumstances were part of material appended to

the challan, itself and on the basis of evidence having come on record during trial, no inference could be drawn against petitioner for being held vicarious liable of any culpable act. In support of contention, Counsel placed reliance on the judgment of Apex Court in **Mohd. Shafi Vs. Mohd Rafiq (JT 2007(5) SC 562**).

Public Prosecutor supported the finding recorded under order impugned and submits that there is sufficient legal evidence come on record during trial as such no error has been committed in taking cognizance of offence against petitioner.

I have considered rival contentions of both the parties and with assistance examined material on record. Scope of Section 319, CrPC has been examined by Apex Court in **Kishun Singh Vs. State of Bihar (1993(2) SCC 16)** followed in recent judgment in **Rajinder Singh Vs. State of UP (AIR 2007 SCW 5034)** and it was observed:

> "In **Kishun Singh v. State of Bihar (1993) 2 SCC 16**, it was observed:
> "**11.** On a plain reading of Sub-section (1) of Section 319 there can be no doubt that it must appear from the evidence tendered in the course of any inquiry or trial that any

person not being the accused has committed any offence for which he could be tried together with the accused. This power, it seems clear to us, can be exercised only if it so appears from the evidence at the trial and not otherwise. Therefore, this sub-section contemplates existence of some evidence appearing in the course of trial where from the Court can prima facie conclude that the person not arraigned before it is also involved in the commission of the crime for which he can be tried with those already named by the police. Even a person who has earlier been discharged would fall within the sweep of the power conferred by Section 319 of the Code. ..."

It is, therefore, clear that if the evidence tendered in the course of any enquiry or trial shows that any person not being the accused has committed any offence for which he could be tried together with the accused, he can be summoned to face trial even though he may not have been charge sheeted by the investigating agency or may have been discharged at an earlier stage.”

In **Lokram Vs. Nihal Singh (2006(1) SCC 192**) Apex Court observed ad infra:

> **"10**. On a careful reading of Section 319 of the Code as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceeding on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person even though had initially been named in the F.I.R. as an accused, but not charge sheeted, can also be added to face the trial. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge sheet or the case diary do not constitute evidence. Of course, as evident from the decision reported in **Sohan Lal and others v. State of Rajasthan, (AIR 1990 SC 2158)** the position of an accused who has been discharged

stands on a different footing."

In view of what has been observed (supra), it is clear that power U/s 319 CrPC can be exercised either by Court on its own or on an application by some one including the accused already before it to summon other person appearing to be guilty of offence. Such power U/s 319 CrPC is extra ordinary conferred on the Court to use very sparingly and only on compelling reasons, if exist, for taking cognizance against other person against whom action has not been taken.

However, Section 319 CrPC contemplates consideration of legal evidence appearing in course of trial which is sufficient to make out prima facie material which may satisfy ingredients constituting offence for prosecution whereof, such person can be sought to be summoned.

It is also true that Court at this stage is not called upon to appreciate such material sought for consideration in exercise of jurisdiction U/s 319 CrPC with a view to evaluate as to whether such an evidence is sufficient for ultimate conviction for such a person sought to be summoned for prosecution invoking S.319 CrPC.

Adverting to merits of instant case, indisputably, while FIR was lodged, initially 12 persons were arrayed as accused and investigation was made of such facts referred to in challan papers – reference whereof is made as well by trial Judge in order impugned. So far as material it relates to refill vouchers either of filled or empty domestic LPG cylinders including of LPG distributing dealers of other Oil Cos., having been found stocked at open place during search & seizure whereof – all were part of charge sheet itself and even after inquiry & investigation, petitioner had not even been considered to be arrayed as an accused at the time of filing charge sheet; on the basis whereof, no inference could have been drawn about any incriminating circumstance pointer to involvement of petitioner for vicarious liability in the incident impugned.

Only fact having come in statement particularly of Surinder Singh (Pw4) referred to in application U/s 319 CrPC, and taken note of by trial Judge for taking cognizance of offence against petitioner vide order impugned, was to the effect that accused Dayal Singh in course of interrogation has given out to him (Pw4) that he (Dayal Singh) was not sole beneficiary of

culpable act found in search in question but share whereof was also being given to Proprietor of M/s Tej Enterprises (petitioner herein).

However, after investigation, what has come on record is that Dayal Singh was engaged by petitioner as LPG cylinder delivery contractor and so also by other LPG distributors and thus Dayal Singh was engaged for delivery of LPG cylinders to its customers and who himself being one of accused, his statement, even if incriminating any body like petitioner, cannot otherwise be read to establish criminal liability of some other person as referred to in S.319 CrPC and that apart, version of Dayal Singh (accused) has been recorded by Surineder Singh (Pw4), except whose statement, no other evidence has been referred to in application U/s 319 CrPC – a bare perusal whereof depicts that APP has made an attempt to show that petitioner being Prop. Of M/s Tej Enterprises whose refill vouchers with filled & empty domestic LPG cylinders were found stocked at an unauthorised open place during search & seizure in question at the instance of accused Dayal Singh who was delivery contractor of petitioner's Firm; therefore, presumption could be drawn that all acts of accused Dayal

Singh by hawkers whom petitioner has engaged on contract basis – on the said premise, no inference of her connivance can be presumed. In the opinion of this Court, no direct or indirect legal evidence came on record during trial, on which inference can be drawn against petitioner pointer to the offence of which cognizance has been taken under order impugned. That apart, Surinder Singh (Pw4) is also having no direct knowledge about his statement recorded in course of trial. This Court has also gone through the record particularly statement of Surinder Singh (Pw4) and does not find any sufficient evidence to prima facie satisfy of commission of offence against petitioner who is sought to be prosecuted while taking cognizance by trial Judge in exercise of jurisdiction U/s 319 CrPC.

Consequently, misc. petitions succeeds and and is hereby allowed alongwith stay petition No.270/98. Order dt.24/02/98 of Special Judge (EC) Jaipur in Case No.7/96 with regard to cognizance taken of offence U/s 3/7 of EC Act against petitioner, is hereby quashed and set aside. Record be sent back forthwith to the trial court to expedite the trial in accordance with law.

(**Ajay Rastogi), J.**